

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DZHOKHAR TSARNAEV

No. 13-CR-10200-GAO

MOTION FOR PRESERVATION
OF JURY AND CJA RECORDS

Defendant-Appellant, Dzhokhar Tsarnaev, by and through counsel, and pursuant to the Fifth and Sixth Amendments to the United States Constitution, respectfully moves this Court for an Order directing: (1) the Department of Justice to preserve until further order of this Court all records in its possession pertaining to the grand jury proceedings in this case; and (2) the Clerk of this Court to preserve until further order of this Court all court records pertaining to the above-referenced case, including, but not limited to, (a) records pertaining to the selection of the grand and petit juries, and (b) records pertaining to appointment and funding of Mr. Tsarnaev's defense through the Criminal Justice Act (CJA).

The following grounds are asserted in support of this motion:

1. A complete and accurate record, essential in any appeal, is especially crucial in a capital case as a critical "safeguard against arbitrariness and caprice." *Dobbs v. Zant*, 506 U.S. 357, 358 (1993) (quoting *Gregg v. Georgia*, 428 U.S. 153, 167 (1976)).
2. The records pertaining to the grand jury proceedings, selection of the grand

and petit juries, and appointment and funding through the CJA may become relevant in the course of the appellate and post-conviction proceedings. Destruction of such records could prevent Defendant-Appellant from meaningfully pursuing a claim.

3. It is counsel for Defendant-Appellant's understanding from consultation with the Clerk's Office, the Jury Administrator, and the CJA Office that it is their practice to preserve jury and CJA records, and that in a capital case all records would be preserved through the conclusion of all post-conviction proceedings. The motion regarding the preservation of records by the Clerk of Court is made, based on these consultations, out of an abundance of caution to ensure that these records are not destroyed through any oversight or change in policy or computer systems.

4. With respect to grand jury proceedings, counsel for Defendant-Appellant seek the preservation of:

- a. all records pertaining to any information, whether documentary or testimonial, provided to the grand jury;
- b. any questions asked by the grand jury; and,
- c. any instructions provided to the grand jury.

5. With respect to the selection of the grand and petit juries, counsel for Defendant-Appellant seek the preservation of:

- a. All AO-12 or JS-12 Forms completed for the Calendar Years 2011, 2012, 2013, and 2014 Master and Supplemental Jury Wheels during the life of the wheels;

- b. Statistical analyses of the Calendar Years 2012, 2013, and 2014 Master and Supplemental Jury Wheels;
 - c. Calendar Years 2011, 2012, 2013, and 2014 Master Jury Wheel data;
 - d. Calendar Years 2011, 2012, 2013, and 2014 Supplemental Jury Wheel data;
 - e. Results of the national change-of-address comparison for Calendar Years 2011, 2012, 2013, and 2014;
 - f. All draws from the Calendar Years 2011, 2012, 2013, and 2014 Master and Supplemental Jury Wheel;
 - g. Municipal resident lists used to construct the Calendar Years 2011, 2012, 2013, and 2014 Master and Supplemental Jury Wheels, and any statistical or other analyses of the municipal resident lists;
 - h. All completed juror summons/qualifications forms used to summon the Grand Jurors and petit jurors in this case;
 - i. All records of excusals or deferments granted to the Grand jurors and petit jurors called for this case;
 - j. Any records of communications between the Jury Commissioner or Clerk's Office and venire members.
6. With respect to CJA records, counsel for Defendant-Appellant seek the preservation of all records pertaining to appointment, authorization, payment, and budgeting in this case.
7. Undersigned counsel have conferred with counsel for the government, who

stated that the government consents to the request regarding its preservation of records pertaining to grand jury proceedings, and takes no position regarding the request regarding the Clerk's Office's preservation of jury and CJA records.

Conclusion

Based on the foregoing, counsel for Defendant-Appellant requests that this Court order the Department of Justice to preserve all grand jury records relevant to this case, and the Clerk's office to preserve all grand jury, petit jury, and CJA records relevant to this case until further order of this Court.

Respectfully submitted,

DZHOKHAR TSARNAEV

by his attorneys

/s/ David Patton

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CERTIFICATE OF SERVICE

I certify that the attached Motion for Preservation of Grand Jury, Jury and CJA Records was filed electronically through the ECF system for the District of Massachusetts, which will send electronic notice to counsel of record for all parties on this the 12th day of January 2017, including the following:

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